

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

LION ELASTOMERS

and

**Case No: 16-CA-190681
16-CA-203509
16-CA-225153**

**UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION, LOCAL 228**

**RESPONDENT'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S DECISION**

Pursuant to Section 102.46(a) of the Board's Rules and Regulations, Respondent Lion Elastomers ("Lion Elastomers" or "Respondent") files the following exceptions to the decision of Administrative Law Judge Michael A. Rosas ("ALJ"), which was issued on April 25, 2019. The specific grounds for these exceptions and citation of authorities are set forth in Respondent's supporting brief.

Exception 1: To the ALJ's finding that "[p]rior to his termination, Joseph Colone had been employed by the Respondent for forty-one years." (Decision, p. 2, lines 38-39).

Exception 2: To the ALJ's finding that "Colone had a good work record." (Decision, p. 2, line 40).

Exception 3: To the ALJ's finding that "Wisenbaker complained that Colone was the only one filing grievances." (Decision, p. 10, lines 24-27).

Exception 4: To the ALJ's finding that "Mosley and Wisenbaker said that Colone was hurting the Union by filing such grievances and pointed to letter agreements resolving the issue by the two absent committeemen." (Decision, p. 10, lines 29-31).

Exception 5: To the ALJ's finding that "Colone replied that he had 'been making it out here for 39 years. You better watch how you talking to me'" (Decision, p. 10, lines 37-38)

Exception 6: To the ALJ's finding that "[h]e then asked Wisenbaker about the grievances, which the latter proceeded to deny." (Decision, p. 10, lines 38-39).

Exception 7: To the ALJ's finding that "Colone's detailed description of the discussion is consistent with the testimony of Griggs and Mosely that the latter made the statement about Colone not 'making it.'" (Decision, p. 10, footnote 7).

Exception 8: To the ALJ's finding that "Mosely insisted that he was referring to the Union, not Colone." (Decision, p. 10, footnote 7).

Exception 9: To the ALJ's finding that "Mosley conceded that he failed to act professionally" (Decision, p. 10, footnote 7).

Exception 10: To the ALJ's finding that "Griggs, on the other hand, understood it to refer to Colone's job security" (Decision, p. 10, footnote 7).

Exception 11: To the ALJ's finding that "[h]er notes confirmed Griggs rendition of a dysfunctional meeting in which Wisenbaker, Mosley and Griggs all acted inappropriately." (Decision, p. 11, lines 5-6).

Exception 12: To the ALJ's finding that Ms. Lord's note that "it's (sic) sounds like KC was the aggressor" was "not conveyed to her by Griggs." (Decision, p. 11, lines 13-14).

Exception 13: To the ALJ's finding that Ms. Lord's note that "Griggs credibly testified that portions of Lord's notes were incorrect notwithstanding his earlier affirmative response to counsel's leading and hypothetical question as to whether he would have any reason to doubt the accuracy of her notes." (Decision, p. 11, footnote 8).

Exception 14: To the ALJ's finding that his failure to draw an adverse inference "is a non-issue since it is undisputed that Griggs did not consider Mosley's remark to be a threat at the time." (Decision, p. 11, footnote 9).

Exception 15: To the ALJ's finding that "[t]he Respondent sought production of the affidavit because the General Counsel inquired about it on cross-examination." (Decision, p. 11, footnote 9).

Exception 16: To the ALJ's finding that "Colone also wrote a note to management apologizing for the incorrect information." (Decision, p. 12, lines 10-11).

Exception 17: To the ALJ's finding that "[t]hat grievance alleged the same safety concerns based on staffing." (Decision, p. 12, lines 12-13).

Exception 18: To the ALJ's finding that the typed statement was "followed by Zamora's handwritten comments." (Decision, p. 12, line 23).

Exception 19: To the ALJ's finding that "Colone had indeed spoken with Zamora about the staffing of the reactors *before* filing the grievance and that Colone's concerns were not baseless." (Decision, p. 12, lines 24-25).

Exception 20: To the ALJ's finding that "Zamora's handwritten comment pushed back on the notion that Colone lied to him" (Decision, p. 12, lines 41-42).

Exception 21: To the ALJ's finding that "Colone's credible testimony that he was informed that the reactor functions in question were actually performed by Taylor was not disputed." (Decision, p. 12, footnote 10).

Exception 22: To the ALJ's finding that "[Wofford's] report reflected the suggestive nature of the interview." (Decision, p. 13, footnote 10).

Exception 23: To the ALJ's finding that "[Dean] conceded that the Respondent planned to increase work hours to eighty-four hours per week." (Decision, p. 14, lines 21-22).

Exception 24: To the ALJ's finding that "[Colone] followed up asking about for [sic] information about the standards" (Decision, p. 14, line 23).

Exception 25: To the ALJ's finding that "[Colone] also warned that the Respondent could face liability." (Decision, p. 14, lines 24-25).

Exception 26: To the ALJ's finding that "Dean agreed to provide the paperwork and initially said he did not know the answer." (Decision, p. 14, line 26).

Exception 27: To the ALJ's finding that "Colone implored [McCray] to stay." (Decision, p. 14, line 33).

Exception 28: To the ALJ's finding that "Dean sat down at his desk to work at his computer and employees left the room." (Decision, p. 14, lines 35-36).

Exception 29: To the ALJ's finding that "Colone asked Dean for the 'paperwork' relating to the new overtime policy." (Decision, p. 14, line 37).

Exception 30: To the ALJ's finding that "Colone replied that Dean was not doing his job and asked if Dean was upset." (Decision, p. 14, lines 38-39).

Exception 31: To the ALJ's finding that "At that point, Dean became angry and stood up and argued briefly with Colone asking if Dean was calling him a liar, to which Dean replied by asking if Colone was calling him a liar." (Decision, p. 14, lines 39 and p. 15, lines 1-2).

Exception 32: To the ALJ's finding that "[Lord's] explanations for the warnings that followed this letter were not credible, and her responses were vague and contradicted information conveyed to her by unit employees." (Decision, p. 14, footnote 14).

Exception 33: To the ALJ's finding that "In fact, cross-examination of her explanations for this letter and many of her subsequent determinations in response to Colone's steward activities were evasive, longwinded and nonresponsive." (Decision, p. 14, footnote 14).

Exception 34: To the ALJ's finding that "They took a confrontational approach in the questioning Colone and he became angry." (Decision, p. 15, lines 10-11).

Exception 35: To the ALJ's finding that "Lord's interview notes of Dean and others essentially confirmed Colone's version of the meeting, including the fact that his questions followed those of other unit employees concerned about work hours: (Decision, p. 15, lines 23-25).

Exception 36: To the ALJ's finding that "[t]he testimony of Dean, Colone, Bailey and McCray was fairly consistent about what happened during the safety meeting." (Decision, p. 15, footnote 16).

Exception 37: To the ALJ's finding that "Mosely's recollection that Dean complained about Colone's questioning during the meeting was not credible." (Decision, p. 15, footnote 17).

Exception 38: To the ALJ's finding that "Dean only reported concern over Colone's comment to McCray during the meeting and the argument after the meeting." (Decision, p. 15, footnote 17).

Exception 39: To the ALJ's finding that "[m]oreover, in contrast to the Colone's documented discipline, there was no evidence that the warning issued to Dean was also documented." (Decision, p. 15, footnote 17).

Exception 40: To the ALJ's finding that "[o]ther than editorial comments in her notes, Lord produced no documentation or other credible evidence to support her conclusion that Colone disrespected or berated Dean during the safety meeting." (Decision, p. 116, footnote 18).

Exception 41: To the ALJ's finding that "[m]oreover, her testimony, as well as that of Wisenbaker, that Colone provide false information in contrast to what other meeting attendees told them, was not credible since their interview statements were essentially consistent with what Colone said during his July 18 interview." (Decision, p. 16, footnote 18).

Exception 42: To the ALJ's finding that "Lord's testimony that Colone became angry during the July 18 meeting was not credible, as it was contradicted by Wisenbaker's testimony that he became angry at the July 20 meeting, and she omitted any reference to such behavior in her otherwise detailed notes of the meeting." (Decision, p. 16, footnote 19).

Exception 43: To the ALJ's finding that "Wisenbaker credibly testified that Colone became angry at some point during both meetings, was sitting close to Wisenbaker on July 20 and Wisenbaker asked Colone to move his chair back." (Decision, p. 16, footnote 19).

Exception 44: To the ALJ's finding that "Moreover, her warning made no mention of Colone badgering Dean after the meeting." (Decision, p. 17, footnote 20).

Exception 45: To the ALJ's finding that "Lord conceded that the Respondent's attitude towards Colone changed after the July 12, 2017 meeting: (Decision, p. 18, footnote 21).

Exception 46: To the ALJ's finding that "We really kind of basically handled him with kit [*sic*] gloves out of respect for his time in the plant. But at some point I think other people looked to us as why do you let this person continue to get away with this, you know." (Decision, p. 18, footnote 21).

Exception 47: To the ALJ's finding that "[a]t some during the conversation, Mosely came on the radio and asked Barnett if 'they sabotaging it, Mike?' Barnett replied, '[y]eah, it looks like they sabotaging it.'" (Decision, p. 19, lines 12-14).

Exception 48: To the suggestion associated with the ALJ's finding that "[a]t first step, Lord merely stated that '[a]n investigation was completed with the facts presented and no violation of Article 17.1 occurred.'" (Decision, p. 19, lines 18-20).

Exception 49: To the ALJ's finding that "Wilbur Butler, who got in an argument with his supervisor, Randy Watson, after the latter accused Butler and another employee, Burton, of loading the wrong truck." (Decision, p. 19, lines 28-29).

Exception 50: To the ALJ's finding that "[o]nce again, this evidence, introduced by the Respondent, opened the door to consideration of adverse action as relevant background in determining bias on its part." (Decision, p. 19, footnote 23).

Exception 51: To the ALJ's finding that "Colone credibly testified that the switch was nonfunctional and that he heard Mosely make the remark about sabotage." (Decision, p. 19, footnote 24).

Exception 52: To the ALJ's finding that "[Mosley] did not deny that someone made the sabotage accusation over the radio." (Decision, p. 19, footnote 24).

Exception 53: To the ALJ's finding that "Lord was informed by Colone that an employee overheard Burton curse in the course of telling Watson to get his hand out of his face and that Burton told him that Watson had also cursed." (Decision, p. 20, lines 4-6).

Exception 54: To the ALJ's finding that "Lord's focus turned to Colone's statement that Burton told him that Watson cursed during the incident." (Decision, p. 20, lines 6-7).

Exception 55: To the ALJ's finding that "[Lord] interviewed Burton three times. Each time he denied hearing Watson curse but did hear Watson tell Butler not to curse. During her third interview, Lord had Burton sign a statement to the *[sic]* effect." (Decision, p. 20, lines 8-10).

Exception 56: To the ALJ's finding that Greenlee suffered a "heat related injury." (Decision, p. 20, line 19).

Exception 57: To the ALJ's finding that in his written statement, Colone asserted "Greenlee informed him that Cheryl Benoit from human resources told Greenlee that he would have been required to undergo retraining if he had been out of work for six months, and that Dean had given Greenlee a blue hat upon returning to work, thus indicating that he was a permanent employee." (Decision, p. 20, lines 26-29).

Exception 58: To the ALJ's finding that "Colone's credible testimony that Butler called him to report the incident was unrefuted (Decision, p. 20, footnote 25).

Exception 59: To the ALJ's finding that "Lord's selective memory of the investigation, on the other hand, was not credible." (Decision, p. 20, footnote 25).

Exception 60: To the ALJ's finding that "Lord also conceded that Colone told her that another employee heard Butler tell Watson to get his hand out of his face, but could not recall whether it was during that statement that Butler cursed." (Decision, p. 20, footnote 25).

Exception 61: To the ALJ's finding that "with the exception of a brief statement that she had Burton sign denying that he heard Watson curse, Lord produced no other notes of her discussions with Colone, Butler or anyone else." (Decision, p. 20, footnote 25).

Exception 62: To the ALJ's finding that "Lord's rationale in concluding that Colone misstated the facts, based on the denials of the grievance allegations by Benoit, Dean and Ancelet, was not credible." (Decision, p. 21, footnote 26).

Exception 63: To the ALJ's finding that "[i]n doing so, [Lord] misconstrued Colone's March 27 statement as either stating or implying that she had *personal* knowledge of Benoit's remarks to Granlee or Dean's providing Granlee with a blue hat. However, the grievance merely alleged that Bonoit and Dean made the statements to Greenlee" (Decision, p. 21, footnote 26).

Exception 64: To the ALJ's finding that "[t]he record established that her problem was with numerous grievances filed by Colone." (Decision, p. 22, footnote 28).

Exception 65: To the ALJ's finding that "Lord speculated that Colone 'would take a complaint and I think he created his own facts about what he believed about the complaint, and he would make these statements, and when I investigated them, they were never what he said they were . . . Sometimes when he would write a grievance, . . . he was very broad and I would

have to follow up and ask him to please give me the names of who he was referring to, or the dates of the incidents, or things like that. He wasn't very clear. And so then he would go back and he would try to write a statement and give meth information . . . I just know they were not true statements.” (Decision, p. 22, footnote 28).

Exception 66: To the ALJ's finding that “Wisnaker confirmed that the action was premised on Colone's grievances: ‘It was more around false information.’” (Decision, p. 22-23, footnote 28).

Exception 67: To the ALJ's finding that “Lord's reference to the oversight as ‘untruthful’ was an overdramatization; there is no credible evidence to support an inference that Colone, after detecting the problem and apprising his supervisor of it, intentionally misled his supervisor about its source.” (Decision, p. 23, footnote 29).

Exception 68: To the ALJ's finding that “Lord produced no credible evidence to confirm that Colone lied about what he heard over the radio. In fact, her characterization of Colone's allegations as misstatements was premised solely on a slew of denials or lack of knowledge on the part of employees that she spoke to.” (Decision, p. 24, footnote 30).

Exception 69: To the ALJ's finding that “Lord's conclusion that the grievance contained “false information” was yet another slanted version of an event. She premised that conclusion on the denials or lack of knowledge on the part of Burton and others in the warehouse that they witnessed Watson curse at Butler.” (Decision, p. 24, footnote 31).

Exception 70: To the ALJ's finding that “Lord testified that Colone's made false statements in relation to the Granlee grievances, but when pressed about it conceded that she could not say whether or not Colone made up the statements.” (Decision, p. 24, footnote 32).

Exception 71: To the ALJ's finding that "Mosley's statement – that Colone wasn't "gonna make it" – is very similar to the sorts of statements made in *Overnite Transp. Co.*, 332 NLRB at 1335 and *Amptech, Inc.*, 342 NLRB at 1135, in that it implied a future adverse consequence." (Decision, p. 26, lines 36-39).

Exception 72: To the ALJ's misapplication of the legal conclusion that "the standard for what is coercive is objective, not subjective." (Decision, p. 26, lines 43 and (Decision, p. 27, lines 1).

Exception 73: To the ALJ's finding that "Griggs understood the comment to relate to Colone's job security, but believed at the time it was unlikely the threat would be carried out given his good work performance and position as a Union representative." (Decision, p. 26, footnote 33).

Exception 74: To the ALJ's misapplication of the legal proposition that "even if the other three people present did not intend or perceive the words as a threat, if a reasonable employee in Colone's position would tend to do so, the words are prohibited." (Decision, p. 27, lines 3-5).

Exception 75: To the ALJ's finding that "telling an employee 'you ain't gonna make it' is not objectively threatening." (Decision, p. 27, lines 7-8).

Exception 76: To the ALJ's finding that "[t]he threat that Colone wouldn't 'make it' reasonably suggested the possibility of discharge, a specific adverse employment consequence." (Decision, p. 27, lines 9-11).

Exception 77: To the ALJ’s finding that “[b]y contrast, the statement found to be a threat in *Amptech, Inc.* – that the employer would ‘keep its options open’ – was much more open-ended.” (Decision, p. 27, lines 11-12).

Exception 78: To the ALJ’s conclusion that “Mosley’s statement to Colone on October 24, 2016 that he ‘ain’t gonna make it’ unlawfully threatened Colone in violation of Section 8(a)(1) of the Act.” (Decision, p. 27, lines 21-22).

Exception 79: To the ALJ’s finding that “*Media General Operations, Inc.* is inapplicable.” (Decision, p. 28, lines 19).

Exception 80: To the ALJ’s finding that “Colone did express concerns about the way the workplace changes would affect the safety of his fellow employees.” (Decision, p. 28, lines 22-23).

Exception 81: To the ALJ’s finding that “Colone’s reference to the Respondent’s potential liability exposure was obviously not over concern for its legal and financial interests but a tactical approach in advocating employees’ concerns relating to overtime, heat and safety.” (Decision, p. 28, lines 23-25).

Exception 82: To the ALJ’s finding that “Respondent’s argument also fails since the standard was requested during the meeting and Dean agreed to provide it before the discussion became contentious.” (Decision, p. 28, lines 28-30).

Exception 83: To the ALJ’s conclusion that Mr. Colone’s conduct after “most others had left did not remove it from the res gestae of the meeting.” (Decision, p. 28, lines 30-31).

Exception 84: To the ALJ's conclusion that Colone's conduct "sufficiently opprobrious." (Decision, p. 28, lines 36).

Exception 85: To the ALJ's conclusion that the "place of discussion" weighs in favor of protecting Colone's misconduct at and after the safety meeting. (Decision, p. 29, lines 1-27).

Exception 86: To the ALJ's conclusion that *Atlantic Steel Co.*, 245 NLRB 814 (1979), *Public Service Co. of New Mexico*, 364 NLRB 86 (2016), *Carrier Corp.* 331 NLRB 126 (2000) are inapposite or distinguishable. (Decision, p. 29, lines 10-27).

Exception 87: To the ALJ's conclusion that the "subject matter of the discussion" weighs in favor of protecting Colone's misconduct at and after the safety meeting. (Decision, p. 29, lines 29-46, p. 30, lines 1-9).

Exception 88: To the ALJ's conclusion that the "nature of the employee's outburst" weighs in favor of protecting Colone's misconduct at and after the safety meeting. (Decision, p. 30, lines 11-34, p. 31, lines 1-8).

Exception 89: To the ALJ's conclusion that *Atlantic Steel* is distinguishable. (Decision, p. 31, lines 2-5)

Exception 90: To the ALJ's conclusion that Colone's "conduct during the July 12, 2017 meeting did not forfeit the protection of the Act." (Decision, p. 31, lines 17-18).

Exception 91: To the ALJ's conclusion that "there is no need to consider circumstantial evidence given that the disciplinary letter clearly refers to Colone's protected behavior during the meeting." (Decision, p. 31, lines 32-34).

Exception 92: To the ALJ's finding that "Respondent's alleged justifications for disciplining Colone on July 20 are inauthentic." (Decision, p. 31, lines 36-37).

Exception 93: To the ALJ's finding that "I do not credit the assertion that Colone made false statements during his interview." (Decision, p. 31, lines 39-40).

Exception 94: To the ALJ's finding that "the argument that Colone was disciplined for behavior during the safety meeting which violated the Respondent's policies is circular. The conduct that is alleged to have violated its policies during the meeting *was* the protected concerted activity discussed above" (Decision, p. 31, lines 40, p. 32, lines 1-3).

Exception 95: To the ALJ's finding that "the disciplinary letter emphatically does *not* say anything about his conduct towards Lord and Wisenbaker during that interview." (Decision, p. 32, lines 6-7) (emphasis in original).

Exception 96: To the ALJ's finding that "the fact that his protected activity was a significant motivating factor in his discipline still makes that discipline unlawful." (Decision, p. 32, lines 8-10).

Exception 97: To the ALJ's finding that Respondent issued the Last Chance Agreement to Mr. Colone because "he was filing false grievances." (Decision, p. 32, line 22)

Exception 98: To the ALJ's finding that "[the two written warnings for performance] were not alleged to have been factors in the Respondent's decision to present Colone with the LCA" and "the Last Chance Agreement itself was not issued because of these prior incidents." (Decision, p. 32, lines 25-26, 28-29).

Exception 99: To the ALJ's finding that "[t]here was no credible evidence that any of the errors in the grievances filed by Colone were intentional or that he had a malicious intent to deceive the Respondent." (Decision, p. 33, lines 14-15).

Exception 100: To the ALJ's finding that "the substantive safety concerns [Colone] raised about the dangers inherent in multitasking, however, remained the same in both the original and revised grievances." (Decision, p. 33, lines 19-21).

Exception 101: To the ALJ's finding that "the mere absence of corroborating evidence does not mean that Colone maliciously lied, only that the Respondent determined that his grievance was without merit." (Decision, p. 33, lines 25-26).

Exception 102: To the ALJ's finding that "[t]he same is true of Colone's February 15, 2018 grievance; although the Respondent's investigation did not corroborate his allegations, nothing shows that Colone, in filing the grievance, did anything other than rely on statements made to him by another employee, Butler." (Decision, p. 33, lines 26-29).

Exception 103: To the ALJ's finding that "in support of three grievances he filed on March 23, 2018, the Respondent provided no evidence, however, to refute Colone's written allegations that he received the information from the grievance [sic] and/or employees in a particular work area." (Decision, p. 33, lines 29-32).

Exception 104: To the ALJ's finding that "Colone's alleged misstatements do not reveal the bad faith needed to lose the Act's protection." (Decision, p. 33, lines 32-33).

Exception 105: To the ALJ's finding that "the record supports the conclusion that the Respondent scrutinized Colone's grievance for discrepancies between his version of events and those of other witnesses." (Decision, p. 33, lines 35-36).

Exception 106: To the ALJ's finding that "[t]hese inconsistencies provide the basis for his Last Chance Agreement, and the Respondent claims they justify Colone's discharge." (Decision, p. 33, lines 38-39).

Exception 107: To the ALJ's finding that "I do not find credible any assertion that Colone made false statements during this interview." (Decision, p. 33, footnote 39).

Exception 108: To the ALJ's finding that "[t]he more reasonable conclusion is that these incidents were seized upon by the Respondent as a pretext to discharge Colone for being a highly active and zealous union steward." (Decision, p. 34, lines 2-4).

Exception 109: To the ALJ's finding that "[t]he mistakes in his grievances do not serve to make the act of filing those grievances anything other than concerted activity which is protected by the Act." (Decision, p. 34, lines 4-5).

Exception 110: To the ALJ's finding that "[a]lthough the submission of inaccurate grievances may have been the main transgression described in the LCA, it was not the only one." (Decision, p. 34, lines 7-8).

Exception 111: To the ALJ's finding that "the first of those letters, as discussed above, upbraided Colone for his speech during an employee safety meeting." (Decision, p. 34, lines 11-12).

Exception 112: To the ALJ's conclusion that Respondent unlawfully issued Colone the Last Chance Agreement. (Decision, p. 34, lines 37-40).

Exception 113: To the ALJ's conclusion that "Colone was discharged for conduct that was part of the res gestae of concerted activity." (Decision, p. 35, lines 7-8).

Exception 114: To the ALJ's conclusion that "Respondent's proffered motivation for discharging Colone – provision of false statements – is illegitimate, it is not necessary, as the Respondent claims, to perform a *Wright lines* analysis." (Decision, p. 35, lines 21-23).

Exception 115: To the ALJ's finding that a *Wright Line* analysis is "irrelevant here, because there is such direct evidence." (Decision, p. 36, lines 9-10).

Exception 116: To the ALJ's finding that "Respondent expressly issued the Last Chance Agreement to Colone because of protected activity that was part of the *res gestae* of his role as a union steward." (Decision, p. 36, lines 13-14).

Exception 117: To the ALJ's finding that "Mosley's threat that Colone would not 'make it, which was prompted by Colone filing grievances, demonstrates such hostility.'" (Decision, p. 36, lines 17-18).

Exception 118: To the ALJ's finding that "Respondent argues that it terminated Colone because he refused to sign the Last Chance Agreement, not because of his concerted activity *per se*." (Decision, p. 36, lines 20-21).

Exception 119: To the ALJ's finding that "this dispute does not pit enforcement of Colone's Section 7 rights as a union steward against the Respondent's management rights under the CBA with respect to employee performance." (Decision, p. 36, lines 27-29).

Exception 120: To the ALJ's finding that "the Respondent was not lawfully entitled to discipline him because he was annoying and filed grievances based upon what unit employees told him." (Decision, p. 36, lines 32-33).

Exception 121: To the ALJ's finding that "the Respondent' violated Section 8(a)(3) and (1) of the Act by discharging Colone on June 8, 2018 because of his protected and concerted activities as a union steward." (Decision, p. 36, lines 33-35).

Exception 122: To the ALJ's conclusion that "Respondent, by James Mosley, threatened employee Joseph Colone's job security in violation of Section 8(a)(1) of the Act on October 24, 2016 by telling Colone that he 'ain't gonna make it' because he refused to settle or withdraw grievances." (Decision, p. 37, lines 10-12).

Exception 123: To the ALJ's conclusion that "Respondent discharged Colone on June 8, 2018 in violation of Section 8(a)(3) and (1) because he filed numerous grievances." (Decision, p. 37, lines 14-15).

Exception 124: To the ALJ's conclusion that "[t]he aforementioned unfair labor practices affected commerce within the meaning of Section 2(6) and (7) of the Act. (Decision, p. 37, lines 17-18).

Exception 125: To the ALJ's conclusion that Respondent violated the National Labor Relations Act.

Exception 126: To the ALJ's stated remedies. (Decision, p. 37, lines 23-44, p. 38, lines 1-2).

Exception 127: To the ALJ's recommended order. (Decision, p. 38, lines 4-44, p. 39, lines 1-20).

Exception 128: To the ALJ's use of an Exhibit not entered into evidence. (Decision, p. 15, lines 27-31, p. 16, lines 1-18; p. 16, footnote 18).

Exception 129: To the ALJ's failure to adequately cite to the record.

Exception 130: To the ALJ's manipulation, misstatement and misrepresentation of the record.

THIS the 23th day of May, 2019.

Respectfully submitted,

s/Jaklyn Wrigley

Steven R. Cupp, Esq.

Jaklyn Wrigley, Esq.

FISHER & PHILLIPS LLP

2505 14th Street, Suite 300

Gulfport, Mississippi 39501

(228) 822-1440 - Telephone

(228) 822-1441 - Facsimile

scupp@fisherphillips.com

jwrigley@fisherphillips.com

ATTORNEYS FOR RESPONDENT

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WORKERS INTERNATIONAL UNION, LOCAL 228**

CERTIFICATE OF SERVICE

I hereby certify that on May 23th, 2019, I e-filed the foregoing using the Board's e-filing system and immediately thereafter served it by electronic mail upon the following:

Timothy L. Watson
Bryan Dooley
National Labor Relations Board, Region 16
819 Taylor Street, Room 8A24
Fort Worth, TX 76102-6107

Sasha Shapiro, Esq.
United Steel Workers International Union
60 Blvd. of the Allies
Five Gateway Ctr, Room 807
Pittsburgh, PA 15222-1214

Rick Erpelding, Staff Rep
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial
and Service Workers International Union, Local 228
1300 Rollingbrook Drive, Suite 504
Baytown, TX 77521

s/Jaklyn Wrigley
JAKLYN WRIGLEY
